



September 28, 2000

VIA FAX 202 906 7755

ATTENTION 1550-0023

Manager
Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Manager,

This is in response to the Office of Thrift Supervision's (the OTS) Notice and Request for Comments on the Proposed Agency Information Collection Activities for the Thrift Financial Report (the "TFR") as published in the August 4, 2000, *Federal Register* beginning on page 48049.

ITEM 1— Nontraditional Lending, High Loan-to-Value Loans and Subprime Loans

MidFirst acknowledges the OTS's concern regarding high loan-to-value lending on permanent mortgage loans secured by single-family dwellings. However, as outlined in the capital regulation at 12 CFR 567 and in the OTS Schedule CCR Instruction Manual for CCR 450 (20 percent asset risk weighing category), the OTS recognizes the lower credit, and resulting capital, risks associated with VA and FHA insured mortgage loans regardless of the associated loan-to-value ratios on the loans. Additionally, the OTS allows qualifying single family mortgage loans insured by a private mortgage insurer acceptable to FNMA or FHLMC to be included in the 50 percent asset risk weighting category provided the private insurance covers principal loan balance in excess of 80 percent of appraised value. The rules for Nontraditional Lending in the Proposal do not address loans guaranteed or insured by FHA, VA, private mortgage insurance, or other similar programs. MidFirst requests clarification regarding the treatment of loans insured by FHA, VA, private mortgage insurance, etc. on loans with loan-to-value ratios exceeding 90 percent, and that such clarification is preferably in the form of a definition but minimally in the form of an affirmation in the commentary associated with the



publication of the final revisions. MidFirst supports methodology consistent with current Schedule CCR risk weightings of loans with loan-to-values exceeding 80 percent that contain some form of insurance against the risk of principal loss. MidFirst also suggests that consideration be given to removing loans from the definition of high risk once the loan-to-value falls below 90 percent.

MidFirst is concerned with the OTS's proposed definition of subprime loans. MidFirst concurs that subprime lending generally poses higher credit risks than does prime lending. However, as recognized by OTS Director Seidman, subprime lending prudently performed is a reasonable strategy and one that offers additional credit channels to applicants with previous credit problems. MidFirst also recognizes that subprime lending can become predatory in some limited instances if prudent controls and oversight do not exist. However, MidFirst is concerned that lenders reporting higher dollar balances or concentrations of subprime loans may inaccurately be labeled by third parties as predatory lenders. As such, MidFirst is concerned that publicly released data on an institution's subprime lending activity will become a proxy for predatory lending activity by users unsophisticated with the TFR reporting methodology and by others who may understand the data but create the impression that subprime lending is predatory. Such situations could have negative consequences for the institution from public perception and marketing perspectives. Such situations could also negatively impact borrowers with marginal or subprime credit histories since their access to various credit channels may become more limited.

MidFirst incorporates by reference the *Report of the Staff to Chairman Gramm, Committee on Banking, Housing and Urban Affairs, Predatory Lending Practices: Staff Analysis of Regulators' Responses* dated August 23, 2000, and supporting letters from regulators. While this report does not address the issues presented in the OTS proposal, it does illustrate the lack of clear, specific, and consistent guidance on what is deemed predatory and the void of data relating to predatory lending. All participants in the financial institution industry, whether financial institution, regulator, or customer, have a general idea as to what a predatory loan is; however, the lack of guidance also allows subprime loans to fall within the definition of predatory. MidFirst believes the lack of data on predatory lending volumes increases the likelihood that publicly available data on subprime lending will unjustly become a proxy for predatory loans. MidFirst opines that reporting of subprime loans will create unwarranted confusion, generate unjust allegations of predatory lending, augment the regulatory reporting burden, and impair marginal borrowers access to credit.

The commentary on page 48051 states that "Subprime loans may take the form of direct extensions of credit; loans purchased from other lenders, including delinquent or credit impaired loans purchased at a discount; and automobile or other financing paper purchased from other lenders or dealers." MidFirst is concerned that this definition is



burdensome in terms of purchased loans including those purchased at a discount. Purchased loans often consist of pools of loans; while the acquiring institution should prudently sample the loans in the pool prior to purchase, acquirers seldom review all loans in the pool. The definition above would require a 100 percent file review to accurately identify all subprime loans in the pool. Pools of loans are typically purchased based on the overall characteristics of the entire pool and not based on the individual loans within the pool; requiring an institution to report components of the pool as subprime voids the economic reality of how the pool is analyzed and purchased. Further, loans are often purchased months or years after origination and at a time in which the original criteria reasonably identifying a loan as subprime becomes irrelevant. For example, a 100 percent loan-to-value ratio or a high loan origination fee on a 30-year mortgage becomes less meaningful in identifying the loan as subprime as time elapses. Finally, loans purchased at a discount alleviate credit quality concerns since the discount, if reasonably determined, accounts for credit risks; therefore, loans purchased at a discount should not necessarily be identified as subprime by a purchaser since they will possess lower credit risks.

The proposed definition of the term subprime allows for only limited exceptions. The suggestion that institutions targeting higher risk borrowers or serving economically disadvantaged areas is an attempt to establish some exceptions and to limit disincentives for institutions to engage in such lending. However, other exceptions should be considered. For example, taking a real estate mortgage in an abundance of caution should not trigger subprime reporting or high loan-to-value reporting. In other cases, mitigating circumstances may warrant the origination of a loan with nontraditional aspects.

For both high loan-to-value loans and for subprime loans, MidFirst encourages the OTS to allow specific reserves to be netted against a loan balance in determining if the asset should be reported in either category. This is based on the OTS intent of using the reported high loan-to-value or subprime loan data to identify credit risks. Since the specific reserve reduces the credit risk, the need to report the loan is lessened or eliminated.

Given the stated purpose of collecting nontraditional and subprime data as being the early identification of asset quality problems, deteriorating credit quality, increasing capital risk, and ultimately increasing insurance fund risk, it is reasonable to provide for a *de minimus* level below which reporting is not required. The OTS has regulatory precedents for allowing *de minimus* investments, and MidFirst believes such an approach in the subject circumstance will reduce the reporting burden without imposing undue risk. MidFirst suggests that an appropriate methodology would focus on a percentage of capital since capital protects the insurance fund and the ultimate objective is to prevent unnecessary risk to the insurance fund.



It is reasonable for all institutions, regardless of size, to follow the same reporting requirements. To do otherwise, would limit the OTS's stated purpose of early identification of deteriorating asset quality in some cases. If the public inaccurately associates subprime lending with predatory lending, a disincentive will exist for nontraditional reporting lenders to engage in subprime lending; if small and large institutions were subject to different rules, the potential would exist for disincentives to affect one institution but not another despite the fact the two institutions may engage in very similar practices and in very similar quantities.

ITEM 14 – Board of Directors' IRR Limits

Regarding item 14 of the proposal relating to Board of Directors' IRR Limits, MidFirst believes these limits are changed so infrequently and are so readily available to the OTS through the examination and off-site monitoring process that there is no need to report the limits on the TFR. Although some policies are subject to public review, many policies, including the Interest Rate Risk ("IRR") Policy, are not. MidFirst believes most policies address issues of a confidential and proprietary nature and should not be available to the public and competitors. Publishing IRR limits in the TFR renders this information publicly available.

MidFirst further opines that periodic safety and soundness examinations allow OTS to judge the quality of the institution's IRR management process including management's ability to establish reasonable and prudent IRR limits. Provided the OTS is comfortable with an institution's IRR management, changes to IRR limits should not be a cause for concern per se. Further, the true risk associated with IRR is based on the actual IRR exposure of the institution and not based on the limits established by management or whether the true exposure is within Board limits.

ITEM 19 – Holding Company Financial Information

MidFirst is not commenting on the collection of holding company data. However, in the event the final rule requires holding company financial information to be collected, MidFirst supports the proposal to allow the OTS Regional Director to specifically identify the individual holding company from within a multiple holding company structure from which data is to be collected and reported.

ITEM 20 – Transactions with Affiliates

MidFirst recognizes the regulatory interest relating to transactions with affiliates as well as the regulatory oversight of such activities as established by law. However, MidFirst opines that this information is not subject to public review, and the reporting of such information will result in the public dissemination of confidential information. Although



MidFirst recognizes that the details of the individual transactions would not be included in the TFR report, the mere fact that a transaction exists in a particular amount should not render it subject to public scrutiny. MidFirst would not object to a yes/no question regarding whether compliance was maintained during the quarter with a) the individual and aggregate limitations and b) the qualitative criteria. MidFirst would also not object to a yes/no question as to whether new transactions with affiliates occurred during the quarter; in this manner, the OTS would be alerted to the need for additional off-site monitoring without any additional information becoming public.

ITEM 31 – Eliminating Confidential Treatment for Certain Interest Rate Risk and Past Due Data

MidFirst opposes the removal of confidential treatment of TFR Schedule CMR information regarding maturity and rate information used in assessing interest rate risk. Removing the confidential treatment according Schedule CMR will provide competitors with detailed confidential and proprietary information regarding an institution's interest rate risk position. Further, the removal of confidential treatment would create an undue burden and a competitive disadvantage for required CMR filers as opposed to thrifts and other banking entities not subject to CMR reporting requirements. By compiling and reporting the information to the OTS on a quarterly basis, the OTS is able to monitor the IRR exposure of an institution and take supervisory action as may be appropriate. Yet there is no compelling reason for this information to be publicly released. Information such as "ARM Balances by Distance to Lifetime Cap", "ARM Cap and Floor Detail", "Teaser ARMs", "WARMs", and "Reset Frequency", to name but a few specific line items, is unnecessarily detailed for the general public and provides competitors with unwarranted insight into the strategies of a specific institution. In short, publicly releasing the CMR data is detrimental to those institutions required to report it. In cases where an institution desires to share CMR data with a third party, the institution can certainly release the data; however, the proposal provides for the unilateral release of Schedule CMR data by the OTS without consideration to the potential adverse affects to the reporting institution.

MidFirst would gladly provide any clarifying information on the above issues that the OTS may request.

Sincerely,

A handwritten signature in black ink that reads 'Charles R. Lee'.

Charles R. Lee
Vice President
MidFirst Bank